

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GREGORY P. BARNETT,)	CIVIL NO. 07-00491 SOM-BMK
#A4000428,)	
)	
Petitioner,)	ORDER DENYING MOTION FOR
)	RELIEF FROM JUDGMENT AND
vs.)	OBJECTION TO MAGISTRATE'S
)	ORDER DENYING DISCOVERY
TODD THOMAS,)	
)	
Respondent.)	
_____)	

**ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT AND OBJECTION TO
MAGISTRATE'S ORDER DENYING DISCOVERY**

On November 10, 2008, Barnett filed three documents including (1) a Motion for Relief from Judgment ("Motion"); (2) an Objection to Magistrate's Order Denying Discovery Filed October 14, 2008 ("Objection"); and (3) a Supplement to Objection to Magistrates F&R Filed September 30, 2008 ("Supplemental Objection to F&R"). For the following reasons, Barnett's Motion and Objection are **DENIED** and the court will not consider Barnett's Supplemental Objection to F&R.

In his Motion, Barnett requests relief from judgment on the basis that the court prematurely entered Judgment against him on October 17, 2008. On October 30, 2008, this court issued an Order Adopting and Supplementing Findings and Recommendation wherein the court vacated the October 17, 2008, Judgment as premature. The court then considered Barnett's Objections and

denied his Petition. (Doc. No. 129.) Accordingly, Barnett's Motion is **DENIED** as moot.

In his Objection, Barnett argues that Magistrate Judge Barry M. Kurren erred when, on October 14, 2008, he denied Barnett's request to conduct discovery. Under 28 U.S.C. § 636(b)(1)(c), "[w]ithin ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court." Under Rule 6(d) of the Federal Rules of Civil Procedure, "[w]hen a party may or must act within a specified time after service and service is made under rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a). Barnett, therefore, had up to and including November 3, 2008, to file an appeal of the October 14, 2008, Order. As noted, Barnett filed his Objection on November 10, 2008, one week late. Accordingly, Barnett's Objection is **DENIED** as untimely.

Finally, the court's denial of Barnett's Motion and Objection render the October 30, 2008, Judgment effective. The court will not, therefore, consider Barnett's Supplemental Objection to F&R.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, November 13, 2008.



/s/ Susan Oki Mollway
Susan Oki Mollway
United States District Judge

Barnett v. Thomas, Civ. No. 07-00491 SOM; ORDER DENYING MOTION FOR RELIEF FROM JUDGMENT AND OBJECTION TO MAGISTRATE'S ORDER DENYING DISCOVERY; prose attorneys\Non Dispositive Orders\hmg\2008\Barnett 07-00491 SOM (dny 11.10.08 motions)